FCC 95-196

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	MM Docket No. 92-266
Cable Television Consumer Protection	)	
and Competition Act of 1992: Rate Regulation	)	MM Docket No. 93-215
	)	

SIXTH REPORT AND ORDER AND ELEVENTH ORDER ON RECONSIDERATION

Adopted: May 5, 1995 Released: June 5, 1995

By the Commission: Commissioner Barrett issuing a statement.

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I. INTRODUCTION

1. In this *Sixth Report and Order and Eleventh Order on Reconsideration* we amend our definitions of small cable entities to encompass a broader range of cable systems that will be eligible for special rate and administrative treatment. In addition to amending our definitions, we make available to this expanded category a new regulatory scheme that will be available immediately for use by certain small cable companies. This new form of regulation should provide both rate relief and reduced administrative burdens.

II. SUMMARY

2. In amending our definitions and introducing a new, simplified form of small system rate relief, the Commission continues its ongoing efforts to offer small cable companies administrative relief from rate regulation in furtherance of congressional intent. In each of the orders that we have adopted in this rate proceeding, small cable companies have been afforded flexibility in how they can comply with rate regulations while reducing burdens on themselves and providing good service to subscribers. Through our actions today, the Commission expands the category of systems eligible for such opportunities to include approximately 66% of all cable systems in the nation serving approximately 12.1% of all cable subscribers.

3. Specifically, we amend our definitions so that systems serving 15,000 or fewer

subscribers that are owned by small cable companies of 400,000 or fewer subscribers are eligible to elect small system cost-of-service relief, as well as certain other relief previously made available to small systems and small operators. The new cost-of-service approach will involve a very simple, five element calculation based upon a system's costs. The calculation will produce a per channel rate for regulated services that will be presumed reasonable if it is no higher than $1.24 per channel. If the formula generates a higher rate, the operator still will be permitted to charge that rate if not challenged by the franchising authority or, upon being challenged, if the operator meets its burden of proving that the rate is reasonable. This new regulation will accord these small systems substantial flexibility in establishing the types of costs to be included and in allocating those costs among services. Our analysis of cost data, when combined with our understanding of the many unique challenges facing small cable companies, leads us to conclude that a simplified approach will best serve a segment of the cable industry that needs assistance in coping with rate regulation in order to serve subscribers better and to grow its business. In addition, this approach should facilitate regulation of cable rates by small local franchising authorities who wish to have a procedure for doing so that is simpler than existing forms of regulation.

III. BACKGROUND

4. The Cable Television Consumer Protection and Competition Act of 1992 ("the 1992 Cable Act") requires the Commission to reduce regulatory burdens and the cost of compliance for small systems.[1] Pursuant to that mandate, the Commission introduced small system relief beginning with the initial *Report and Order and Further Notice of Proposed Rulemaking ("Rate Order")*, in which it allowed certified local franchising authorities to permit these small systems to simply certify that basic service and equipment rates are reasonable.[2] This exempts small systems from having to file initial rate justification forms after becoming subject to regulation. We adopted this approach in recognition of the fact that franchising authorities are in the best position to weigh the costs of a formal rate review against the beneficial impact that such a review might have on basic service rates. Small systems also were exempt from rate regulation for more than six months while the Commission considered additional proposals for small system treatment.[3]

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[1] 1992 Cable Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. §§ 534, 543(i). The 1992 Cable Act amends Title 6 of the Communications Act, as amended, 47 U.S.C. § 521 et seq. ("Communications Act"); *see* 47 C.F.R. § 76.901(c).

[2] *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, 5921 (1993); 47 C.F.R. § 76.934(a).

[3] *Memorandum Opinion and Order*, MM Docket No. 92-266, FCC 93-389, 8 FCC Rcd 5585 (1993). We addressed these proposals in a previous rulemaking. *See Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking ("Second Reconsideration Order")*, MM Docket No. 92-266, FCC 94-38, 9 FCC Rcd 4119 (1994).

5. Concurrent with lifting the stay of rate regulation in May 1994, and subsequently, the Commission has introduced several additional measures to assist small cable companies. First, we provided regulatory relief to a larger number of small cable companies than the Commission did initially, and we created special rate rules applicable to these classes of operators.[4]

6. We adopted these alternative rules and definitions based upon information in the record that raised a legitimate question about the impact of rate regulation on smaller operators. In addition, evidence submitted by petitioners suggested that small systems face higher than average costs. We expressed concern that some small operators that did not meet the statutory definition of a small system might nonetheless lack the administrative and financial resources necessary to fully comply with rate regulation. Thus, we defined "small operators" as those operators with a total subscriber base of 15,000 or fewer subscribers that are not affiliated with or controlled by larger operators.[5] We concluded that a small operator would be affiliated with or controlled by a larger company if that company holds a 20% equity interest (active or passive) or exercises *de jure* control, such as through a general partnership or majority voting shareholder interest.[6] The Commission created this affiliate limitation because our concerns about small operators were limited to those companies that do not have access to the financial resources or other purchasing discounts available to larger companies.[7]

7. These concerns led us to conclude that certain aspects of our rate and administrative relief should be made available only to independent small systems and those owned by small multiple system operators ("small MSOs"). We defined a small MSO as one with 250,000 or fewer total subscribers that owns only systems with fewer than 10,000, and has an average system size of 1,000 or fewer subscribers.[8] We stated that the 250,000 subscriber cap would ensure that larger MSOs do not benefit from administrative or rate relief that they do not need because they are likely to have the resources necessary to comply fully with the rate regulation. We also indicated that the 10,000 and 1,000 subscriber limits helped to tailor relief to those operators most likely to own numerous small systems.[9]

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[4] *Second Reconsideration Order*, 9 FCC Rcd at 4172-83, 4218-33.

[5] 47 C.F.R. § 76.922(b)(4)(i)(A).

[6] *Second Reconsideration Order*, 9 FCC Rcd at 4173-74, n. 157; 47 C.F.R. § 76.922(b)(4)(i)(B).

[7] *Second Reconsideration Order*, 9 FCC Rcd at 4173-74.

[8] 47 C.F.R. § 76.922(b)(5)(i).

[9] *Second Reconsideration Order*, 9 FCC Rcd at 4225-26.

8. For small operators and independent small systems, the Commission created transition relief rate rules, exempting those operators and systems from the requirement that initial regulated rates be based on a 17% competitive rate reduction from September 30, 1992 levels.[10] Rather, these systems may maintain their March 31, 1994 rates, with certain adjustments as determined under FCC Form 1200.[11] These adjustments allow operators electing transition relief to increase their rates on a quarterly basis to reflect changes in permitted external costs and channel adjustments.[12] Furthermore, small operators and independent small systems that elect transition relief also may recover inflation increases that have occurred since September 30, 1992.[13] The Commission stated that transition relief would be available to qualifying operators pending analysis of cost data from small operators and low-price systems.

9. Systems electing transition relief must unbundle programming service charges from equipment charges when establishing initial regulated rates. However, an operator that owns more than one small system may establish its unbundled charges for regulated equipment based on the average equipment costs of all its small systems, or only some of them, rather than on a system-by-system basis.[14] We made this relief available to all MSOs, regardless of their total subscriber base. Our rules also permit independent small systems and those owned by small MSOs to elect streamlined rate reductions under which they reduce each billed item of regulated cable service as of March 31, 1994 by 14% instead of setting rates based on 17% competitive rate reductions from September 30, 1992 levels.[15] Streamlined rate reductions reduce administrative burdens by eliminating the need for these small systems to complete FCC Forms 1200 and 1205, and by eliminating the requirements to unbundle equipment and installation charges from programming service charges, and to set equipment and installation charges at actual cost. Independent small systems and small systems owned by small MSOs also may use simplified forms if they elect to use the interim cost-of-service approach to justify initial regulated rates, thus reducing the amount of

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[10] 47 C.F.R. § 76.922(b)(4)(i)(C).

[11] *Id.* Low-price systems also are eligible for transition treatment. Low-price systems are those (1) whose March 31, 1994 rate is below their March 31, 1994 benchmark rate or (2) whose March 31, 1994 rate is above their March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below their March 31, 1994 benchmark rate, as determined under FCC Form 1200. 47 C.F.R. § 76.922(b)(4)(ii).

[12] 47 C.F.R. § 76.922(b)(4)(i)(C).

[13] *Ninth Order on Reconsideration*, MM Docket No. 92-266, FCC 95-43, 60 Fed. Reg. 10512 (February 27, 1995); to be codified at 47 C.F.R. § 76.922(d)(2).

[14] 47 C.F.R. § 76.923(l).

[15] 47 C.F.R. § 76.922(b)(5)(ii).

information that the system must submit to justify higher rates.[16]

10. Regardless of the approach taken to establish initial regulated rates, small operators are given a "grace period" of 60 days after regulation begins in which to complete and to file rate justifications and to notify subscribers of the new rates.[17] All other operators must complete these tasks within 30 days of the date of initial regulation. Additionally, small operators have 90 days from the initial date of regulation in which to implement restructured rates, unlike all other operators who face up to a year of refund liability. A small operator also may make its initial basic tier rates effective on 30 days' notice without prior approval from the franchising authority, although the operator remains subject to refund liability.[18] With regard to regulatory fees, the Commission has provided an assessment formula that is based upon an exact subscriber count.[19] Thus, for example, a system with 100 subscribers does not have to pay the same regulatory fee as a system with 1,000 subscribers. This approach relieves all smaller cable systems of bearing a disproportionate burden of the aggregate cable service regulatory fee imposed upon the industry as a whole.

11. Our going forward rules provide cable operators generally with incentives to add new programming, but also specifically give qualifying small systems an opportunity to recover headend costs associated with adding new channels and providing better service to subscribers. Under the going forward rules, all operators may introduce New Product Tiers, which they are permitted to price as they elect.[20] They also may add new channels to cable programming service tiers ("CPSTs") and recover a flat mark-up fee plus license fees, subject to certain restrictions.[21] However, small systems that are independent or are owned by small MSOs may recover the flat mark-up fee for new channels, plus the actual cost of the headend equipment necessary to add new channels, not to exceed $5,000 per channel,

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[16] *See Report and Order and Further Notice of Proposed Rulemaking ("Cost Order")*, MM Docket No. 93-215, FCC 94-39, 9 FCC Rcd 4527, 4668-72 (1994).

[17] *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* ("*Fifth Order on Reconsideration*" or "*Further Notice of Proposed Rulemaking*"), MM Docket Nos. 93-215 & 93-266, 9 FCC Rcd 5327 (1994); 47 C.F.R. § 76.934(e).

[18] *Id.*

[19] *See Report and Order,* MD Docket No. 94-19, FCC 94-140, 9 FCC Rcd 5333, 5368 (1994).

[20] *See Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking ("Sixth Reconsideration Order"*), MM Docket Nos. 92-266 & 93-215, FCC 94-286, summarized at 59 Fed. Reg. 62614 (December 6, 1994); to be codified at 47 C.F.R. § 76.987.

[21] *Id.*, to be codified at 47 C.F.R. §§ 76.922(d)(3)(x), (d)(3)(xi), and (e).

plus the channel's licensing fee, if any, for adding not more than seven new channels to regulated service tiers over the next three years.[22] The cost of the headend equipment must be amortized over the useful life of the equipment and qualifying systems will be allowed an 11.25% return on the undepreciated investment.[23] This dual recovery for the addition of channels is also available to larger systems that are independent or are owned by small MSOs if the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more.[24]

12. Finally, the Commission has permitted independent small systems, small systems owned by small MSOs, and certified local franchising authorities to create alternative rate regulation agreements.[25] Through these agreements, the parties negotiate directly with each other to determine reasonable rates for basic service and cable programming service tiers.[26] The agreements also may include provisions relating to rate increases and network upgrades. The agreements do not have to be based on the Commission's rules or forms, but must take into account the regulatory criteria of the 1992 Cable Act, and they must ensure that participating systems will not be required to charge rates lower than would be permitted by our benchmark rules.[27] This approach provides for regulation of rates but relieves the parties of administrative burdens that sometimes may accompany implementation of our rules. Alternative rate regulation agreements also offer regulatory certainty to the parties, who are able to agree in advance to initial and future rates, as well as plans for network upgrades. In turn, this regulatory certainty may assist small systems in obtaining financial assistance needed to upgrade their networks and provide better service to subscribers.

13. We released the *Further Notice of Proposed Rulemaking* that gives rise to this *Order* for two reasons. First, in the course of adopting the relief described above, we stated that several of these measures might be modified or terminated following completion of our cost studies.[28] Before completing those studies and adopting final rate rules, we believed we should seek comment on possible alternative definitions of small systems and small operators,

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[22] *Id.*, to be codified at 47 C.F.R. § 76.922(e)(7).

[23] *Id.*

[24] *Id.*

[25] *See Eighth Order on Reconsideration*, MM Docket Nos. 92-266 & 93-215, FCC 95-42, 60 Fed. Reg. 14373 (March 17, 1995).

[26] *Id.*, to be codified at 47 C.F.R. § 76.934(f).

[27] *Id.*

[28] *See Second Reconsideration Order*, 9 FCC Rcd at 4178 (transition relief); *id.*, 9 FCC Rcd at 4223 (streamlined rate reductions).

rather than restricting ourselves to the existing definitions.[29]

14. A second issue, raised earlier in this docket by two commenters, concerns the applicability of the Small Business Act.[30] In 1992, Congress amended Section 3(a) of the Small Business Act to require federal agencies to use small business definitions created by the Small Business Administration ("SBA"), or in the alternative, to seek public comment on different definitions and obtain the approval of the Small Business Administrator with regard to any regulation applicable to small businesses, unless other statutory definitions apply.[31] SBA rules currently define a small cable company as one with $11 million or less in gross revenues.[32] The SBA's Office of Advocacy and the Small Cable Business Association ("SCBA") believe the current definitions in our rules defining eligibility for transition and administrative relief are underinclusive and were promulgated in violation of Section 3(a) of the Small Business Act.[33] They urged us to re-evaluate the definitions and seek public input before deciding on permanent standards. Although we did not concur in these commenters' construction of the Small Business Act, we agreed that additional comment on existing and alternative definitions of small cable systems and small cable companies would aid our efforts to relieve deserving systems and companies of regulatory burdens.[34]

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[29] *Further Notice of Proposed Rulemaking*, 9 FCC Rcd at 5330.

[30] *See Small Business Credit and Business Opportunity Enhancement Act*, Pub. L. No. 102-366, § 222, 106 Stat. 986, 999 (1992).

[31] 15 U.S.C. § 632(a).

[32] 59 Fed. Reg. 16513 (April 7, 1994). This SBA definition became effective after the Commission adopted and released its rules establishing transition relief for small operators. The Commission's *Second Reconsideration Order* was adopted February 22, 1994 and released March 30, 1994. The SBA's revised definitions were adopted April 7, 1994 and became effective April 22, 1994. The Commission's rules were published in the Federal Register on April 15, 1994 and became effective May 15, 1994. Previously, the SBA defined a small cable company as one with $7.5 million or less in gross revenues. 13 C.F.R. 121.601 (1993) (subsequently revised).

[33] *See Reply Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Further Notice of Proposed Rulemaking* in MM Docket No. 93-215, submitted July 28, 1994; SCBA *Reply Comments to the Fifth Notice of Proposed Rulemaking* in MM Docket No. 92-266, submitted July 27, 1994. SCBA also has filed an intervenors' brief in a lawsuit challenging the Commission's cable rate regulations. *See* Brief of Intervenor Small Cable Business Association in *Time Warner Entertainment Co., L.P. v. Federal Communications Commission*, No. 93-1723 (D.C. Cir.).

[34] *Further Notice of Proposed Rulemaking*, 9 FCC Rcd at 5330, n. 30.

15. Accordingly, we issued the *Further Notice of Proposed Rulemaking* seeking to establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs by soliciting comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment.[35] We sought comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small systems and small operators. We specifically sought comment on these issues in light of Section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

III. COMMENTS

16. Commenters generally assert that the Commission should act quickly to adopt revised definitions. They point to a number of industry changes that have occurred since passage of the 1992 Cable Act, including consolidation of ownership and the development of potential competition from other sources of video programming.[36] The Cable Telecommunications Association ("CATA") warns that these changes, when combined with current regulatory treatment, could result in some smaller operators discontinuing service to communities.[37] CATA states that unless a broader range of smaller cable operators are provided with additional rate relief, these "small communities will be relegated to no service or to limited service from other multi-channel providers . . . who are unfettered by regulation and have no obligation to serve" some communities.[38]

17. Commenters note that for smaller operators facing regulation, as well as franchise demands to provide certain community services, time and expertise needed to analyze and comply with existing rules are in short supply. According to Avenue Cable TV, et al. ("Avenue"), smaller operators have too few subscribers to generate the revenues sufficient to cover the expense of hiring enough employees to comply with existing rules, or to retain outside legal and accounting expertise.[39] Commenters also contend that existing special rate rules for small systems and small operators do not properly reflect the unique business environments in which they operate. For example, Avenue and Cole point out that small operators do not qualify for programming and equipment discounts due to the low

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[35] *See Fifth Order on Reconsideration*, 9 FCC Rcd at 5329.

[36] *See* Joint Comments of Cable Operators ("Cole") at 4-5.

[37] *See* CATA Comments at 8.

[38] *Id.*

[39] *See* Avenue Comments at 4; *see also* CATA Comments at 5.

number of subscribers that they serve.[40] Inability to qualify for these discounts often results in smaller operators using older equipment that is costly to maintain. At the same time, commenters observe that a smaller system serving a large rural area faces increased construction costs due to the increased amount of cable that must be installed to reach the entire area and increased operating costs given the greater amount of facilities that must be maintained.[41] Commenters are unopposed in their conclusion that these factors, along with other economic realities (e.g., lower-income subscribers to whom many small systems and small operators provide service), constrain their ability to recover all of their costs or to increase revenue through local advertising or by offering new services.[42]

18. Commenters contend that these unique business factors have a negative financial impact upon a far broader cross-section of cable companies than those small systems, small operators, and small MSOs currently eligible to take advantage of existing rate and administrative relief. In turn, they suggest that ineligibility for special rate relief makes it difficult for some of those small cable operators to attract capital necessary to upgrade their systems and to provide better service to their subscribers.[43] While commenters unanimously agree that the Commission should broaden the definitions of small systems and small operators, the definitions they suggest vary widely, ranging from defining a small system as one with 3,500 or fewer subscribers to defining a small cable company as one with $100 million or less in annual regulated revenues or $40 million or less in annual gross revenues.[44] In addition, some parties urge the Commission to amend the small system definition so that it is based upon the number of subscribers in the franchise area served, rather than the number of subscribers served by a common, principal headend as currently defined.[45] Commenters also stated all small systems should be allowed to take advantage of regulatory relief, regardless of their affiliation with a larger company.[46]

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[40] *See* Avenue Comments at 9; Cole Comments at 6.

[41] *See* Avenue Comments at 4-5.

[42] *See* National Cable Television Association ("NCTA") Comments at 11.

[43] *See* Avenue Comments at 8.

[44] *See* CATA Comments at 5; NCTA Comments at 19, 22; Small Cable Business Association ("SCBA") Comments at 20-21; Small Business Administration's Office of Advocacy ("SBA") Comments at 5-8. In comments, Avenue encouraged the Commission to define a small cable company as one earning $25 million or less in annual gross revenue. Avenue Comments at 2. However, in its reply comments, Avenue switched to support definitions proposed by NCTA. Avenue Reply Comments at 3.

[45] *See* SCBA Comments at 26; NCTA Comments at 13; CATA Comments at 9.

[46] CATA Comments at 6-7; SCBA Comments at 26; NCTA Comments at 7.

19. The National Cable Television Association ("NCTA"), SCBA, and the SBA's Office of Advocacy all support defining a small cable company as one that earns $100 million or less in annual regulated revenues.[47] These commenters note that the Commission has used $100 million in annual regulated revenue as a tool in common carrier regulation to distinguish between large and small local exchange carriers.[48] Small local exchange carriers (i.e., those earning less than $100 million in annual regulated revenues) enjoy relaxed regulation of their tariffs and exemption from other requirements. For example, small local exchange carriers are not required to file annual and quarterly financial and traffic reports that large local exchange carriers must file, and they are exempt from the Commission's expanded interconnection requirements.[49]

20. The Commission adopted relaxed requirements for small local exchange carriers because they generally do not have the financial and administrative resources to comply with all aspects of common carrier regulation. NCTA, SCBA, and SBA's Office of Advocacy contend that small cable companies earning $100 million or less in annual regulated revenue are at the same disadvantage within the context of cable regulation.[50] Therefore, they urge the Commission to expand upon our current definitions by defining a small cable company as one with $100 million or less in annual regulated revenue, and by providing this category with relief in the final rules which we adopt in this proceeding.[51]

21. In the alternative, NCTA, SCBA, SBA's Office of Advocacy, and the National Telephone Cooperative Association encourage the Commission to look to more recent proceedings in the personal communications services ("PCS") docket, and, at a minimum, to define a small cable company as one earning $40 million or less in gross annual revenue.[52] SCBA notes that in the *Second Reconsideration Order*, the Commission recognized that the size of a cable operator influences its ability to attract capital.[53] We reached a similar conclusion in the *Broadband PCS Order*, where we determined that companies earning $40

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[47] NCTA Comments at 19; SCBA Comments at 20, 25; SBA Comments at 5.

[48] *See* 47 C.F.R. §§ 32.11(a), (e).

[49] See 47 C.F.R. §§ 43.21, 43.22, 64.1401(a).

[50] NCTA Comments at 21; SCBA Comments at 20; SBA Comments at 5-8.

[51] *Id.*

[52] NCTA Comments at 22; SCBA Comments at 9; SBA Comments at 8; National Telephone Cooperative Association Reply Comments at 4. As an alternative to revenue- and subscriber-based definitions, SCBA also proposes special modified benchmark treatment for all systems not affiliated with the top 25 cable MSOs.

[53] SCBA Comments at 21; *see Second Reconsideration Order*, 9 FCC Rcd at 4174.

million or less in annual gross revenue would have difficulty obtaining the capital necessary to enter the nascent PCS industry, and we therefore adopted specific measures designed to aid these smaller PCS companies.[54] NCTA, SCBA, and SBA contend that the challenges facing smaller companies in the PCS market are the same that confront smaller cable companies.[55] SCBA states that cable operators with annual revenues of less than $40 million should qualify "without question" as small operators eligible for special treatment.[56]

22. Some other commenters offered subscriber-based definitions that, in some instances, are analogous to revenue-based definitions. For example, Cole argues that a small cable company should be defined as one serving 400,000 or fewer subscribers.[57] Cole contends that such a definition would preclude the top 30 MSOs from being eligible for regulatory relief, because the top 30 MSOs each serve more than 400,000 subscribers; combined they serve approximately 85% of the nation's 55 million cable subscribers.[58] Cole asserts that large local exchange carriers (i.e., those earning more than $100 million in annual regulated revenue) serve 85% of the nation's telephone customers. According to Cole: "Applying the telephone company standard to the cable industry would make possible the continued existence of the independently owned cable businesses that have been the pioneers and backbone of the cable industry."[59] SBA's Office of Advocacy, while clearly preferring a revenue-based definition as discussed above, suggests that defining a small cable company as one serving 100,000 or fewer subscribers, similar to the rural telephone company definition adopted in the PCS proceedings, also could serve to make regulatory

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[54] *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd 5532, 5608 (1994).

[55] NCTA Comments at 22; SCBA Comments at 9; SBA Comments at 8; National Telephone Cooperative Association Reply Comments at 4.

[56] SCBA Comments at 21.

[57] Cole Comments at 9, n. 11.

[58] *Id.*

[59] Cole Comments at 9. Alternatively, Cole suggests defining a small cable company as one with 250,000 or fewer subscribers. Cole Comments at 10. Cole notes that the Commission used a 250,000 subscriber-based standard to define a small MSO in the *Second Reconsideration Order*. *See Second Reconsideration Order*, 9 FCC Rcd at 4225. While Cole agrees that companies with 250,000 or fewer subscribers are not equipped financially or administratively to cope fully with the Commission's regulations, it urges the Commission to rescind the other limiting factors currently contained in the small MSO definition. Cole Comments at 10. Further, Cole argues that systems with 5,000 or fewer subscribers should be accorded total deregulation to the maximum extent permitted by law. Cole Comments at 12-13.

relief available to a significant number of cable operators.[60] Interestingly, SBA's Office of Advocacy does not support adoption of SBA's own definition of a small cable company, a viewpoint generally shared by other commenters.[61] SBA defines a small cable company as one that earns $11 million or less in annual gross revenues.[62] SBA's Office of Advocacy notes parallels between the telephone and cable industries and believes the Commission should look to the regulation of telephony as model for developing size standards appropriate for the cable industry, rather than rely on SBA standards used to determine eligibility for loans.[63]

23. CATA generally argues against a revenue-based definition because it believes that such a definition would "ignore the reality of the community-based cable business which must be self-supporting and profitable if they are to survive."[64] CATA notes, however, that should the "Commission determine that a gross revenue figure is appropriate for some purposes, CATA would support the National Cable Television Association's (NCTA) filing in this proceeding."[65] CATA suggests a small system be defined as one with 3,500 or fewer subscribers, noting that the Commission currently uses this subscriber-based standard to determine when systems must provide local origination and public, educational and government access channels.[66] CATA further states that at about the 3,500 subscriber mark, systems begin to generate the revenue necessary to support these services.[67]

24. Finally, almost all commenters argue that the Commission should not preclude a small system from regulatory relief based upon its affiliation with an MSO. They also urge the Commission to define a small system based upon the number of subscribers it serves in a franchise area, rather than from a system's principal headend. NCTA argues that Congress intended the Commission to provide relief to all small systems of 1,000 or fewer subscribers without regard to the size of the company that owns them.[68] According to

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[60] SBA Comments at 9.

[61] SBA Comments at 5, n. 5. *See also* SCBA Comments at 8-9.

[62] 13 C.F.R. § 121.601.

[63] SBA Comments at 4-5.

[64] CATA comments at 2.

[65] CATA Comments at 2.

[66] CATA Comments at 5. *See* 47 C.F.R. § 76.702.

[67] CATA Comments at 5.

[68] *See* NCTA Comments at 8. *See also* SCBA Comments at 26.

CATA, the "problems faced by small systems are the same, regardless of whether they are owned by a large company. The advantage of large company ownership may be that some programming is less expensive or that some equipment can be purchased in bulk, but surely that savings alone (where it exists) cannot begin to justify ignoring the basic mathematics that dictates that fixed costs spread over fewer subscribers produces less revenue."[69] With regard to the basis for defining a small system, SCBA argues: "Although the Commission chose to adhere to its historic definition of what constitutes a system, it created a compliance system that is based on a different measure - franchise areas. The Commission needs to resolve the conflict by either requiring compliance only on a system level or by determining small system qualification on a franchise area by franchise area basis."[70]

V. DISCUSSION

A. The New Category Of Systems and Operators Eligible for Relief

25. We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates. Based on the record in this proceeding and our analysis of the rate justifications that have been submitted since our revised rate rules became effective in May 1994, we conclude that our definitions of small operators and small MSOs need to be changed to encompass the broader range of operators in need of rate relief. Therefore, we will expand upon the definition of a small system to include any system that serves 15,000 or fewer subscribers. Furthermore, we significantly expand upon the definition of a small operator, redefining it and renaming it as a "small cable company" serving a total of 400,000 or fewer subscribers over all of its systems. Finally, we will eliminate the existing definitions of a small operator and small MSO. We will extend to the expanded category of small systems owned by small cable companies certain rate and administrative relief as discussed below, and also the small system rate relief provisions adopted in the accompanying *Eleventh Order on Reconsideration*.

26. In the 1992 Cable Act and its legislative history, Congress made clear its belief that small systems would be in need of administrative and rate relief as a consequence

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[69] CATA Comments at 7.

[70] SCBA Comments at 28.

of the re-regulation of the cable industry.[71] We are convinced, however, that systems of up to 15,000 subscribers are likewise in need of relief and that we have the authority to extend relief to them. As more fully explained below, the comments in this proceeding and our review of benchmark and cost-of-service rate justifications leads us to conclude that these larger systems generally face many of the same challenges that systems of 1,000 or fewer subscribers do in providing cable service. In view of this finding, we believe the relaxation of certain rate rules that we hereby order is consistent with the 1992 Cable Act. We note in particular the Statement of Policy contained in the statute in which Congress expressed its intent, inter alia, to:

> (1) promote the availability to the public of a diversity of views and information through cable television . . .;
> (2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;
> (3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems . . . .[72]

Relaxing regulatory burdens should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress cited above. Moreover, in prescribing rules governing basic service rates, the Communications Act requires us to "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission . . . ."[73] We believe this mandate authorizes us to expand the category of small systems and provide them with rate and administrative relief. Section 303(r) of the Communications Act further supports our decision to take Congress's goals into account in extending relief to systems with up to 15,000 subscribers.[74] The action we take today should also ease burdens for local franchising authorities and the Commission, in furtherance of congressional intent. In particular, as we simplify matters for smaller cable companies, we do the same for smaller local franchising authorities, who we understand to be just as concerned as smaller cable operators with the potential burdens and costs of regulation.

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[71] Communications Act, § 623(i), 47 U.S.C. § 543(i). To the extent we refer herein to systems of up to 15,000 subscribers as "small systems," we do so for purposes of convenience. We are not using that term to refer to the class of systems described in Section 623(i) of the Communications Act.

[72] 1992 Cable Act, § 2(b)(1)-(3).

[73] Communications Act, § 623(b)(2)(A), 47 U.S.C. § 543(b)(2)(A).

[74] Section 303(r) of the Communications Act provides that the Commission may "[m]ake such rules and regulations and prescribe such restrictions and conditions, . . . as may be necessary to carry out the provisions of" the Communications Act. 47 U.S.C. § 303(r).

27. The staff evaluated the 15,000 subscriber standard on the basis of shared economic, physical, and financial characteristics for systems above and below this size, in order to determine the significance of that breakpoint. To evaluate this standard, the staff used data from Warren Publishing Inc.'s cable services database, which was obtained by the Commission in the fall of 1994. This database contains detailed information on most of the country's 11,200 cable systems and 1,500 cable companies. Staff determined that systems with fewer than 15,000 subscribers differ from systems with more than 15,000 subscribers with respect to the following characteristics:

a) the average monthly regulated revenue per channel per subscriber is $0.86 for systems with fewer than 15,000 subscribers and $0.44 for systems with more than 15,000 subscribers;

b) the average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers;

c) the average annual premium revenue per subscriber is $41.00 for systems with fewer than 15,000 subscribers and $73.13 for systems with more than 15,000 subscribers.

This confirms that the use of the 15,000 subscriber standard does result in two groups of systems that have significant distinctions between them.

28. As we have observed previously, our relief for smaller cable entities is aimed at those that do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies.[75] Therefore, relief will be available only to small systems, as now defined, that are owned by small cable companies serving 400,000 or fewer subscribers over all of its systems. In defining a small cable company as one serving no more than 400,000 subscribers, we accepted the recommendations of commenters who urged that we define a small cable company as one that earns $100 million or less in annual regulated revenues. As explained below, establishing the company size in terms of subscribers, rather than dollars, will advance regulatory simplicity; in the cable context, $100 million in annual regulated revenues equates to approximately 400,000 subscribers.

29. With respect to the $100 million standard, we note in particular the recommendation of this measure of company size by SBA's Office of Advocacy. As it and other commenters point out, in the common carrier field entities having annual regulated revenues of more than $100 million are subject to much greater regulatory burdens than those earning less than that amount. For example, for various regulatory purposes the

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[75] *Second Reconsideration Order*, 9 FCC Rcd at 4173 & n. 157

Common Carrier Bureau has created the Tier 1 category of local exchange carriers ("LECs"), consisting solely of LECs with at least $100 million in annual regulated revenues.[76] In expanding LEC interconnection requirements, we limited the impact of our rules to Tier 1 LECs, citing the limited resources of smaller LECs, among other factors.[77] Numerous common carrier reporting requirements apply solely to carriers having annual revenues in excess of $100 million.[78] Likewise, the level of detail required under the Uniform System of Accounts applicable to telecommunications companies depends upon whether the regulated entity is a Class A or Class B company, the former having annual regulated revenues of $100 million or more and the latter having annual regulated revenues below that amount.[79]

30. As SBA's Office of Advocacy states, the logic underlying these common carrier rules also can be applied in the cable context. Cable companies exceeding the $100 million standard are better able to absorb the costs and burdens of regulation due to their expanded administrative and technical resources. Further, we have noted in the telephone context that relaxation of regulatory burdens is justified for smaller entities even when those entities have significant market power.[80] Accordingly, we believe that $100 million in annual regulated revenues is a reasonable standard at which to decrease regulatory burdens.

31. A cable company with an overall subscriber figure of 400,000 we have chosen is roughly equivalent to a cable company with $100 million in annual revenues. To establish this equivalency, the Commission used a regression methodology to estimate the statistical relationship between companies' regulated revenue and their subscribership.[81] The data for

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[76] *Order, Commission Requirements for Cost Support Material To be Filed With 1990 Annual Access Tariffs*, DA 90-274, 5 FCC Rcd 1364, 1364 (Common Carrier Bur. 1990).

[77] 47 C.F.R. § 64.1401(a); *see Report and Order and Notice of Proposed Rulemaking*, CC Docket Nos. 91-141 & 92-222, 7 FCC Rcd 7369, 7398 (1992).

[78] *See* 47 C.F.R. §§ 43.21, 43.22, 43.41, 43.43.

[79] 47 C.F.R. § 32(a).

[80] *Notice of Proposed Rulemaking*, CC Docket No. 86-467, ¶ 48 (rel. Dec. 12, 1986).

[81] Regression analysis is a statistical technique used to estimate the value of a random variable (the dependent variable), given that the value of an associated variable (the independent variable) is known. The regression equation is the algebraic formula by which the estimated value of dependent variable (in this case, the number of subscribers associated with annual regulated revenue) is determined. Generally, the functional relationship between the independent variable and the dependent variable is expressed as:

$$y = f(x) + e \qquad (1)$$

this methodology were taken from the Warren Publishing Inc. cable services database mentioned above. According to this methodology, $100 million in annual regulated revenue is equivalent to 413,830 subscribers. We have rounded the exact figure to 400,000 subscribers for the administrative convenience of operators, franchising authorities, and the Commission. SCBA also equates $100 million in annual revenues with approximately 400,000 subscribers, based on its data showing average per subscriber revenues of about $20 per month. In defining a small cable company, we conclude that it would be better to continue to rely on the total number of subscribers, rather than to rely on a revenue figure. A definition based on subscribers is simpler to apply and will avoid the need to allocate revenues between regulated and unregulated services. Furthermore, evidence suggests that operating challenges faced by small cable companies are closely tied to the number of subscribers served rather than the revenues they generate. In addition, a subscriber-based standard should provide cable companies with the maximum flexibility to add new services and new programming, thereby increasing revenues without losing the benefits of rate relief.

32. At the same time, however, the Commission recognizes that a company's

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where 'y,' the value of the dependent variable (number of subscribers), is determined by 'x,' the independent variable (annual revenue at MSO level). Random variable 'e' is added to the algebraic formula to account for variables other than 'x' that may influence the dependent variable. In the above functional relationship, since 'e' is random, 'y' is also random. It is possible to have different types of functional relationships between dependent and independent variables, e.g., linear or non-linear relationship. We assume that the dependent variable is linearly related to independent variable. Hence we can rewrite f(x) in equation (1) as:

$$f(x) = a + bx \qquad (2)$$

Based on the value of f(x) established in equation (1), equation (2) can be rewritten as:

$$y = a + bx + e \qquad (3)$$

Equation (3) represents a linear regression equation. In this equation, both 'a' and 'b' are "unknown coefficients" and are estimated by fitting a straight line using the 'least-squares criterion'. By the least-squares criterion the best-fitting regression line is that for which the sum of the squared deviation between the actual and estimated values of the dependent variables for the sample is minimum.

Our estimation of the relationship between subscribers and regulated revenues yielded:

$$y = 120.597 + (.004137097)^* x$$

where y = company subscribership and x = company regulated revenues.

revenues will affect its ability to comply with significant regulatory responsibilities. As noted, in the common carrier field we have repeatedly used the standard of $100 million in annual revenues to allocate regulatory burdens. We believe that the impact of regulation on common carriers is similar to that imposed on cable companies. Small cable companies also must generate a minimum level of revenue in order to attract financing to upgrade their networks, to provide new programming to subscribers, and to introduce new services that are now being developed. Therefore, by targeting rate relief at small cable companies with 400,000 or fewer subscribers, we believe we will be assisting those companies earning $100 million or less in annual gross revenues to obtain financing needed to grow.

33. We expect that 66% of all cable systems will meet the expanded definitions of a small system owned by a small cable company. These systems serve only about 12.1% of the nation's subscribers. Consequently, regulatory relief provided to these eligible systems will affect a majority of systems in the industry but a relatively small number of subscribers, thus limiting the overall impact of any rate changes that these new definitions permit.[82]

34. We have chosen to eliminate the existing definitions of a small operator and a small MSO because data made available to the Commission since adoption of the *Second Order on Reconsideration* leads us to conclude that these categories were not broad enough to include all those operators and systems in need of rate and administrative relief. For example, SCBA asserts that only 16 companies meet the definition of a small MSO.[83] Moreover, the small cable industry and local franchising authorities generally state that they find the small operator and small MSO definitions confusing and difficult to understand and to implement. Therefore, the system, operator, and MSO size standards that currently define small operators and small MSOs will no longer be relevant, except for resolving certain pending disputes as discussed more particularly below.

35. In urging the expansion of the class of systems eligible for small system relief, several commenters recommend that we revise the method by which system size is calculated. A small system is currently defined based on the number of subscribers served from its principal headend.[84] A number of commenters argue that the Commission should amend the definition of a small system so that it is defined based upon the number of

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[82] Nonetheless, we believe that the new definitions will not result in unreasonable rates for subscribers. Indeed, the new definitions constitute a needed refinement to the existing definitions and thereby create a better fit between the relief we have created for smaller entities and the class of systems that qualify for that relief.

[83] SCBA Comments at 3.

[84] 47 C.F.R. § 76.901(c).

subscribers served in a franchise area.[85] Under this approach, a cable company that served two franchise areas would be treated for rate regulation purposes as if it operated two separate systems, even if both franchise areas were in fact served by one set of integrated transmission paths running from a single headend. The arguments in favor of this change have been raised before in this proceeding and were rejected by the Commission as unpersuasive.[86] We continue to believe that determining small system size based on a system's principal headend, best harmonizes our small system rate rules with most of our existing regulations on cable system size. For example, the existing exemptions for systems with 1,000 or fewer subscribers in the network non-duplication, public inspection, and technical regulations are based on a system's headend rather than franchise area.[87] To use a franchise area definition would result in some segments of a single integrated cable operation being subject to a different regulatory structure than other segments of the same operation. Therefore, we again reject commenters' suggestions and in expanding current definitions to include systems with 15,000 or fewer subscribers we shall base eligibility on the number of subscribers served from a system's principal headend.

36. We recognize that establishing a numerical test can exclude some systems which may also be in need of rate relief. Therefore, we will entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should be entitled to the same regulatory treatment. Absent such an avenue, the regulatory treatment of two smaller, nearly identical systems could vary significantly merely because, for example, one is just under, and the other just over, 15,000 subscribers, or because the size of their respective owners varies by a few hundred subscribers. In considering such petitions, relevant factors will include the degree by which the system fails to satisfy either or both definitions, whether the system recently has been the subject of an acquisition or other transaction that substantially reduced its size or that of its operator, and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator. If the system fails to qualify for the small system definition because it is affiliated with a cable company that serves over 400,000 subscribers, we will consider the degree to which that affiliation exceeds our affiliation standards,[88] and whether other attributes of the system warrant that it be

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[85] SCBA Comments at 27-29; NCTA Comments at 13-16.

[86] *See Second Reconsideration Order*, 9 FCC Rcd at 4231.

[87] *See* 47 C.F.R. §§ 76.95, 76.305, and 76.601.

[88] A small system will be considered affiliated with a cable company serving more than 400,000 subscribers if such a company holds more than a 20 percent equity interest (active or passive) in the system or exercises de jure control (such as though a general partnership or majority voting shareholder interest). Where a larger company is so affiliated with the small system, we believe the system will have access to the resources it needs to grow as well as larger systems, and hence should not be in need of the relief we will accord to small systems

treated as a small system notwithstanding the percentage ownership of the affiliate. Likewise, a qualifying system that seeks to obtain programming from a neighboring system by way of a fiber optic link, but that is concerned that interconnection of the two systems will jeopardize its status as a stand-alone small system, may file a petition for special relief to ask the Commission to find that it is eligible for small system relief. This is not an exhaustive list of the factors we will consider in reviewing petitions for special relief; operators may support their petitions with whatever information and arguments they deem relevant.

B. Application of Existing Rate and Administrative Relief

37. We have summarized above the steps we have taken previously to ease burdens on smaller systems and operators.[89] We now address the eligibility of systems that have 15,000 or fewer subscribers and are owned by small cable companies to take advantage of these measures. We also initiate the gradual termination of transition relief for all but low-price systems.

38. To qualify for any existing form of relief, systems and companies must meet the new size standards as of either the effective date of this order or on the date thereafter when they file whatever documentation is necessary to elect the relief they seek, at their election. In completing and filing that documentation, the system may use the most recent subscriber data available to it. A system that is eligible for small system relief on either of the dates described above shall remain eligible for so long as the system has 15,000 or fewer subscribers, regardless of a change in the status of the company that owns the system. Thus, a qualifying system will remain eligible for relief even if the company owning the system subsequently exceeds the 400,000 subscriber cap. Likewise, a system that qualifies shall remain eligible for relief even if it is subsequently acquired by a company that serves a total of more than 400,000 subscribers. The ability to remain eligible for small system relief even after being acquired by a larger operator should increase the value of the system in the eyes of operators and, more importantly, lenders and investors. The enhanced value of the system thus will strengthen its viability and actually increase its ability to remain independent if it so chooses.

39. In most instances, eligibility for small system relief will terminate after the system exceeds 15,000 subscribers. As discussed in the subsections that follow, the manner in which relief will be terminated when the system reaches this subscriber threshold will vary depending upon the type of relief at issue.

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that have no such access. *See Second Reconsideration Order*, 9 FCC Rcd at 4173, n. 157.

[89] *See supra* at para. 4-12.

1. Transition Relief for Small Operators

40. In the *Second Order on Reconsideration*, we stated that transition relief would be available pending the adoption of final rate rules. We adopt final rate rules in the accompanying *Eleventh Order on Reconsideration*. Therefore, we provide herein for the termination of transition relief.[90] Systems currently operating under transition relief may continue to do so until two years from the effective date of this order. We establish this period to allow transition systems adequate time to plan for the conversion to some other form of regulation, rather than requiring an immediate conversion. Such a sudden shift would be disruptive not only to operators, but also to subscribers and franchising authorities who are now accustomed to their operators' regulatory status. Until the termination of transition relief, transition systems shall continue to adjust their transition rates in accordance with existing rules. However, systems need not wait the full two years to convert from transition relief. Thus, for example, a transition system may convert at any time by filing the documentation necessary to establish rates in accordance with our benchmark or cost-of-service rules.

41. Unless the operator terminates its transition status sooner as described above, such relief shall terminate two years from the effective date of this item. By that date, a current transition system must have restructured its rates and satisfied all notice and filing requirements pursuant to either our benchmark or cost-of-service rules, the latter of which include the small system cost-of-service regulations adopted in the accompanying *Eleventh Order on Reconsideration*.[91]

42. Transition relief shall remain available only to small systems that already are operating pursuant to that form of relief. In particular, satisfaction of the new system and company size definitions shall not qualify a system for transition relief. Moreover, no small system that first becomes subject to regulation hereafter shall be entitled to transition relief, including systems that satisfy our existing definition of a small operator. Nothing herein shall affect the applicability of transition relief to low-price systems.

2. Cost-of-Service

43. Systems of 15,000 or fewer subscribers owned by small cable companies may now use FCC Form 1225 to justify higher rates through a cost-of-service showing. This

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[90] This termination of transition relief shall affect only systems who qualify for that relief on the basis of size. Low-price systems shall remain eligible for transition relief as provided under the existing rules.

[91] These requirements will not apply if the transition system is subject to an alternative rate agreement in accordance with the *Eighth Order on Reconsideration* as of the date transition relief ends.

"short form" reduces the number of reporting categories and involves fewer calculations. Qualifying systems that have not previously established rates in accordance with Form 1225 may do so on a prospective basis only. Upon exceeding 15,000 subscribers, any system that has established rates based on Form 1225 may continue to charge its then permitted rate and may adjust rates in accordance with all rules applicable to systems that have more than 15,000 subscribers. We believe it unduly burdensome and disruptive to require operators to engage in the standard benchmark or cost-of-service showing immediately upon passing the 15,000 subscriber threshold. This is particularly true in the case of cost-of-service systems since their permitted rates reflect their cost of debt, amortization schedules, and other items that will be established before the system reaches that threshold and will remain constant thereafter. Depriving Form 1225 filers of adjustments for inflation, external cost increases, and channel additions would be inconsistent with the form of relief elected by the operator. Of course, to make a cost-of-service showing after exceeding the 15,000 subscriber threshold, a system will have to use Form 1220.

3. 90-Day "Grace Period"

44. Systems serving 15,000 or fewer subscribers owned by small cable companies currently may avail themselves of the 90-day "grace period" after regulation begins in which to complete and file rate justifications, notify subscribers, and implement restructured rates.[92] Thus, eligible systems are not required to establish rates and service offerings that comply with our rules for 90 days after the initial date of regulation, and they may take up to 60 days from the date of initial regulation to file necessary rate justification forms with their local franchising authority, or the Commission where appropriate. Qualifying systems must continue to give 30 days notice to subscribers prior to implementing rate and service changes.[93] Additionally, eligible systems may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective on 30 days' notice without prior approval from their local franchising authority. If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that the system has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with our regulations.[94] If a system exceeds the 15,000-subscriber threshold during a grace period that already is running, or if the first day of regulation is no more than 90 days after the system exceeds 15,000 subscribers, the system shall still be entitled to the full 90-day and 60-day periods described above, beginning with the initial date of regulation.

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[92] *Fifth Order on Reconsideration*, 9 FCC Rcd at 5329, to be codified 47 C.F.R. § 76.934(e).

[93] 47 C.F.R. § 76.932.

[94] 47 C.F.R. §§ 76.942, 76.961

4. Streamlined Rate Reductions

45. We will expand the category of systems eligible for streamlined rate reductions to include those serving 15,000 or fewer subscribers owned by a small cable company. Thus, eligible systems may choose to reduce each billed item of regulated cable service as of March 31, 1994 by 14% [95] as adjusted for subsequent changes in inflation, external costs, and channel additions and deletions. This will enable more systems to reduce administrative burdens because eligible systems choosing streamlined rate reductions are not required to complete FCC Forms 1200 and 1205, unbundle equipment and installation charges from programming service charges, or set equipment and installation charges at actual cost. Qualifying systems may establish rates in accordance with this relief upon satisfaction of all notice and filing requirements. After reaching 15,000 subscribers, these systems will be able to make all rate adjustments permitted of any system with more than 15,000 subscribers, including increases for inflation and external costs. Systems that have elected streamlined rate relief have set their initial permitted rates to reflect the full reduction rate, as adjusted for inflation. Therefore, these systems should be permitted to adjust rates hereafter to reflect subsequent increases in inflation and external costs even after exceeding 15,000 subscribers.

5. Going Forward Rules

46. Systems of any size that are owned by small cable companies and that incur additional monthly per subscriber headend costs of one full cent or more for the addition of a channel may recover the flat mark-up fee for the new channel, plus the actual cost of the headend equipment necessary to add new channels, not to exceed $5,000 per channel, plus the channel's licensing fee, if any, for adding not more than seven new channels to CPS tiers over the next three years, if the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more.[96] The cost of the headend equipment must be amortized over the useful life of the equipment and small systems will be allowed an 11.25% return on the undepreciated investment.[97] Qualifying systems may elect this relief only with respect to channels added after the effective date of

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[95] 47 C.F.R. § 76.922(b)(5)(ii).

[96] 47 C.F.R. § 76.922(e)(7). We note that many of these systems already may have qualified for this small system going-forward relief even though they have in excess of 1,000 subscribers pursuant to the *Seventh Order on Reconsideration* which makes the relief available to a system with more than 1,000 subscribers if the system is independent or owned by a MSO meeting the prior definition of a small MSO and if the monthly per subscriber cost of the additional headend equipment necessary to receive an additional channel is one cent or more. *Seventh Order on Reconsideration,* MM Docket No. 92-266, FCC 95-8 (rel. Jan. 5, 1995).

[97] *Id.*

this order. Of course, these systems also may offer New Product Tiers which they are permitted to price as they elect, subject to certain conditions.[98] We note that under the existing rule, small systems owned by small MSOs, as those terms were originally defined, could take advantage of this headend upgrade incentive, even if they could not show that the additional monthly per subscriber headend cost of adding a channel was at least one cent. Under the new rule, a system must meet the "one cent rule" in order to qualify for this form of relief. In theory, our revision of the rule could take away this form of relief from systems of under 1,000 subscribers who cannot satisfy the one cent rule. In practice, however, this should not be the case, because the additional cost of headend equipment, when spread over no more than 1,000 subscribers and depreciated reasonably, will always produce a per subscriber monthly cost of at least one cent. If we are incorrect in this conclusion, however, we will entertain petitions for special relief from systems that currently qualify for this form of relief but who would not qualify under the new rule.

6. Alternative Rate Regulation Agreements

47. Systems of 15,000 or fewer subscribers owned by small cable companies will be given the opportunity to work with certified local franchising authorities to create alternative rate regulation agreements in accordance with the *Eighth Order on Reconsideration*.[99] In expanding eligibility, we believe the benefits of alternative rate regulation agreements, i.e., reasonable rates and reduced regulatory burdens, will flow to a greater number of subscribers, cable systems, and local franchising authorities. An agreement made while the system has 15,000 or fewer subscribers shall be enforceable for the term provided in the agreement. Thus, the agreement shall not be terminable simply because the system subsequently exceeds 15,000 subscribers, unless the agreement itself provides for termination at that time.

7. Other Existing Relief

48. Subject to approval of the franchising authority, any system meeting the new small system definition shall be permitted to certify that its rates are reasonable, regardless of the size of the operator.[100] In addition, an operator of any size that owns more than one system with 15,000 or fewer subscribers may establish its unbundled charges for regulated equipment based on the average equipment costs of all such small systems, or only some of them, rather than on a system-by-system basis.[101]

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[98] *See Sixth Reconsideration Order*; to be codified at 47 C.F.R. § 76.987.

[99] *Eighth Order on Reconsideration*, MM Docket Nos. 92-266 & 93-215, FCC 95-42 (February 6,1995).

[100] 47 C.F.R. § 76.934(a).

[101] 47 C.F.R. § 76.923(l).